

# SMART MANUFACTURING DATA HUB USER TERMS & CONDITIONS AGREEMENT

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Prepared for:

AN Other  
Legal Contact  
an\_other@another.com

## THE AGREEMENT:

1. This Agreement is made up of the following:
  - a. this Contract Details Cover Sheet;
  - b. the Terms and Conditions; and
  - c. the Schedules
2. Although all Consortium Members are named on this Contract Details Cover Sheet only some of the Consortium Members will perform the Services. For the purposes of this Agreement, references to “the Consortium” shall be construed as references to the Consortium Members that provide the Services to the Participant from time to time.
3. If there is any conflict or ambiguity between the terms of the documents listed in Paragraph 1 above, a term contained in a document higher in the list

shall have priority over one contained in a document lower in the list.

4. **The Participant's attention is particularly drawn to clause 9 of the Terms and Conditions (Limitation of Liability) which sets out the cap on the Consortium's liability under this Agreement. Nothing in clause 9 of the Terms and Conditions limits the Participant's liability under this Agreement.**
5. The Participant acknowledges and agrees that the position on liability set out in clause 9 of the Terms and Conditions is fair and reasonable given that the Consortium is providing the Services to the Participant free of charge.
6. Each Consortium Member shall use its reasonable endeavours to identify itself to the Participant when providing Services under this Agreement from time to time.
7. The Participant is advised to obtain independent legal advice before signing this Agreement.

## CONTRACT DETAILS:

### CONSORTIUM:

1. **University of Ulster**, whose administrative offices are at Cromore Road, Coleraine, Northern Ireland BT52 1SA;
2. **Science and Technology Facilities Council as part of United Kingdom Research and Innovation represented by The Hartree Centre**, whose administrative offices are at UKRI, Polaris House, North Star Avenue, Swindon SN2 1SZ ;
3. **The University Court of the University of Edinburgh** whose administrative offices are at Old College, South Bridge, Edinburgh, EH8 9YL;
4. **Energy Systems Catapult Limited** whose administrative offices are at Cannon House, The Priory Queensway, Birmingham, B4 6BS;

5. **Scottish Engineering** whose administrative offices are at 105 West George Street, Glasgow G2 1QL;
6. **Industry Wales** whose administrative offices are at Waterton Technology Centre, Waterton Industrial Estate, Bridgend, CF31 3WT, Wales;
7. **D2N2** whose administrative offices are at Commerce House, 8 Experian Way, Nottingham NG2 1EP;
8. **Manufacturing NI** whose administrative offices are at C/o W.D. Irwin & Sons, 5 Diviny Drive, Carn Rd, Portadown BT63 5WE;
9. **Manufacturing & Engineering Growth & Advancement** whose administrative offices are at 15 Aghnagar Rd, Galbally, Dungannon BT70 2PP; and
10. **The Chancellor, Masters and Scholars of the University of Cambridge** whose administrative offices are at The Old Schools, Trinity Lane, Cambridge, CB2 1TN (UCAM).

each a “**Consortium Member**”.

**PARTICIPANT:**

A N Other Widgets incorporated and registered in England and Wales with company number 12345678 whose registered office is at 12 Over Hill Road, London, E12 2ER.

**PARTICIPANT'S PREMISES:**

**12 Down Under Street, London, W12 4RT.**

**PARTICIPANT'S MANAGER:**

**Name:ANOther**

**Title:Director**

**Email:an\_other@another.com**

**Telephone:02 2345 2345**

**CONSORTIUM EMAIL  
ADDRESS:**

[info@smdh.uk](mailto:info@smdh.uk)

**PARTICIPANT EMAIL  
ADDRESS:**

[an\\_other@another.com](mailto:an_other@another.com)

**SCHEDULES:**

Schedule 1 – Services Details

Schedule 2 – Processing, Personal Data and Data  
Subjects

# TERMS & CONDITIONS:

## BACKGROUND

(A) The Consortium is running a Smart Manufacturing Data Hub the aim of which is to deliver a service that supports entities operating in the manufacturing sector to increase the efficiency of the manufacturing process.

(B) The Participant has expressed an interest in participating in the Programme Scheme

(C) The Participant's involvement in the Programme Scheme will be conditional upon and subject to the terms set out in this Agreement.

## AGREED TERMS

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

- 1.1. Definitions

"Applicable Laws"	all applicable laws, statutes, regulations and codes from time to time in force.
"Data Protection Legislation"	means: all applicable data protection and privacy legislation in force from time to time in the UK including: a) the Data Protection Act 2018; b) the UK GDPR; c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; d) any laws which implement or amend any such laws in the UK; e) the guidance codes of practice issued by the Commissioner or other Supervisory Authority applicable to a party; and f) where applicable, other non-domestic

	<p>legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and binding upon a party (including, without limitation, the privacy of electronic communications.</p>
"Business Day"	<p>a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.</p>
"Business Hours"	<p>the period from 9.00 am to 5.00 pm on any Business Day.</p>
"Control"	<p>has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.</p>
"Participant's Equipment"	<p>any equipment, including tools, systems, cabling or facilities, provided by the Participant, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified, where applicable, in Schedule 1.</p>
"Participant Materials"	<p>all documents, information, items and materials in any form, whether owned by the Participant or a third party, which are provided by the Participant to the Consortium in connection with the Services, including the items provided pursuant to clause 4.1.5.</p>
"Participant Personal Data"	<p>any personal data which the Consortium processes in connection with this Agreement, in the capacity of a processor on behalf of the Participant.</p>

<p>"Deliverables"</p>	<p>any output of the Services to be provided by the Consortium to the Participant as specified in Schedule 1.</p>
<p>"EU GDPR"</p>	<p>means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.</p>
<p>"Intellectual Property Rights"</p>	<p>patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.</p>
<p>"Participant's Premises"</p>	<p>has the meaning given in the Contract Details Cover Sheet.</p>
<p>"Programme Scheme"</p>	<p>means the "Smart Manufacturing Data Hub" under which the Consortium intends to evaluate certain manufacturing data outputs of the Participant in order to provide feedback to the Participant regarding how it may seek to improve efficiencies in its manufacturing process.</p>
<p>"Services"</p>	<p>the services to be provided in pursuance of the Programme Scheme as more particularly</p>

	detailed in Schedule 1.
"Consortium's Equipment"	any equipment, including tools, systems, cabling or facilities, provided by the Consortium to the Participant and used directly or indirectly in the supply of the Services including any such items specified, where applicable, in Schedule 1 but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Participant.
"Consortium Personal Data"	any personal data which the Consortium processes in connection with this Agreement, in the capacity of a controller.
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.



- 1.10. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
  - 1.11. A reference to writing or written includes email but not fax.
  - 1.12. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
  - 1.13. A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document, in each case as varied from time to time.
  - 1.14. References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
  - 1.15. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. COMMENCEMENT AND DURATION**

2.1. This Agreement shall commence on the date when it has been signed by the Participant and returned to the Consortium and shall continue, unless terminated earlier in accordance with clause 10 (Termination), until 30th March 2025 when it shall terminate automatically without notice.

2.2. In consideration of the Participant's participation in the Programme Scheme, the Consortium shall provide the Services to the Participant in accordance with this Agreement.

## **3. CONSORTIUM'S RESPONSIBILITIES**

- 3.1. The Consortium shall use reasonable endeavours to supply the Services in accordance with this Agreement in all material respects.
  - 3.1.1. Except as set out in this Agreement, all warranties, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, performance or fitness or suitability for purpose) in respect of the Services to be provided by the Consortium under this Agreement are excluded to the fullest extent permitted by law.
- 3.2. Each Consortium Member shall use reasonable endeavours to identify itself when providing particular Services to the Participant in accordance with this Agreement.

## 4. PARTICIPANT'S OBLIGATIONS

- 4.1. The Participant shall:
  - 4.1.1. co-operate with the Consortium in all matters relating to the Services;
  - 4.1.2. appoint a manager for the Services, such person as identified in the Contract Details Cover Sheet. That person shall have the authority to contractually bind the Participant on matters relating to the Services (including by signing Change Orders);
  - 4.1.3. provide, for the Consortium, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Participant's Premises, office accommodation, other facilities and manufacturing data where applicable and as required by the Consortium including any such access as is specified in Schedule 1;
  - 4.1.4. inform the Consortium of all health and safety and security requirements that apply at the Participant's Premises;
  - 4.1.5. provide to the Consortium in a timely manner all documents, information, items and materials in any form (whether owned by the Participant or third party) required under Schedule 1 or otherwise reasonably required by the Consortium in connection with the Services and ensure that they are accurate and complete;
  - 4.1.6. permit the Consortium, its agents, subcontractors, consultants and employees to upload, store and process the Participant's manufacturing data on any servers and software systems used by the Consortium in respect of the Programme Scheme;
  - 4.1.7. ensure that all the Participant's Equipment is in good working order and suitable for the purposes for which it is used (particularly in relation to the Services) and conforms to all relevant United Kingdom standards or requirements;
  - 4.1.8. where applicable, permit the Consortium to install the Consortium's Equipment on the Participant's Equipment;
  - 4.1.9. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Consortium to provide the Services and or enable the Participant to enjoy the benefit of the Services, including in relation to the installation of the Consortium's Equipment, the use of all Participant Materials and the use of the Participant's Equipment, in all cases before the date on which the Services are to start;
  - 4.1.10. keep, maintain and insure the Consortium's Equipment in good condition and shall not dispose of or use the Consortium's Equipment other than in accordance with the Consortium's written instructions or authorisation;

- 4.1.11. inform the Consortium of any health and safety hazards and any relevant handling, operation and storage requirements of which the Participant is aware in respect of the Participant Materials and Participant's Equipment; and
- 4.1.12. indemnify the Consortium against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Consortium arising out of or in connection with any losses suffered, or claim made against the Consortium by a third party, arising out of or in connection with the provision of the Services, to the extent that such losses, or claim, arose out of the breach, negligent performance or failure or delay in performance of this Agreement by the Participant, its employees, agents or subcontractors.
- 4.2. If the Consortium's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Participant, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Consortium shall be allowed an extension of time to perform its obligations equal to the delay caused by the Participant.
- 4.3. During this Agreement, the Participant shall maintain in force insurance policies with reputable insurance companies against all risks that would normally be insured against by a prudent businessperson in connection with the risks associated with this Agreement (including, but not limited to, public liability insurance, product liability insurance and all risks property damage insurance that is adequate to cover the activities and property of any Consortium Member while at the Participant's Premises for any reason associated with or pursuant to this Agreement), and shall produce to the Consortium on demand full particulars of that insurance and the receipt for the then current premium.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1. In relation to the Deliverables:
  - 5.1.1. the Consortium and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Participant Materials;
  - 5.1.2. the Consortium grants the Participant, or shall procure the direct grant to the Participant of, a fully paid-up, perpetual, worldwide, non-exclusive, royalty-free licence to copy and modify the Deliverables (excluding the Participant Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

- 5.1.3. the Participant shall not sub-license, assign or otherwise transfer the rights granted in clause 5.1.2.
- 5.2. In relation to the Participant Materials, the Participant:
  - 5.2.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Participant Materials; and
  - 5.2.2. grants the Consortium a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Participant Materials for the term of this Agreement for the purpose of providing the Services to the Participant.
- 5.3. The Participant:
  - 5.3.1. warrants that the receipt and use of the Participant Materials in the performance of this Agreement by the Consortium, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - 5.3.2. shall indemnify the Consortium in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Consortium arising out of or in connection with any claim brought against the Consortium, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Participant Materials.
- 5.4. If the Participant is required to indemnify the Consortium under this clause 5, the Consortium shall:
  - 5.4.1. notify the Participant in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 5.3.2 (as applicable) (IPRs Claim);
  - 5.4.2. allow the Participant, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Participant shall obtain the Consortium's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - 5.4.3. provide the Participant with such reasonable assistance regarding the IPRs Claim as is required by the Participant, subject to reimbursement by the Participant of the Consortium's costs so incurred; and
  - 5.4.4. not, without prior consultation with the Participant, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Participant considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Consortium into disrepute.

## 6. COMPLIANCE WITH APPLICABLE LAWS

- 6.1. In performing its obligations under this Agreement, the Consortium shall be entitled to make any changes without notice to the Participant necessary to the Services required as a result of changes to the Applicable Laws.

## 7. DATA PROTECTION

- 7.1. For the purposes of this clause 7, the terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach and processing shall have the meanings given to them in the Data Protection Act 2018 and appropriate technical and organisational measures shall have the meaning given to it in UK GDPR. Non-domestic law shall mean the law of a jurisdiction or territory outside the UK.
- 7.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.3. The parties have determined that for the purposes of Data Protection Legislation:
  - 7.3.1. the Participant shall be the Controller and the Consortium shall be the Processor in respect of any Personal Data that is processed in accordance with Part 1 of Schedule 2; and
  - 7.3.2. the Consortium shall be the Controller and the Participant shall be the Processor in respect of any Personal Data that is processed in accordance with Part 2 of Schedule 2.  
Schedule 2 sets out the scope, nature and purpose of processing by the Processor, the duration of the processing, the types of Personal Data, the categories of Data Subject and details of any cross-border transfers of Personal Data.
- 7.4. Without prejudice to the generality of clause 7.2, to the extent that either party acts as the Controller, that party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Processor for the duration and purposes of this Agreement.
- 7.5. Should the determination in clause 7.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 7.
- 7.6. Without prejudice to the generality of clause 7.2, to the extent that either party acts as the Controller, that party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer

of the Personal Data to the Processor for the duration and purposes of this Agreement.

- 7.7. Without prejudice to the generality of clause 7.2, to the extent that either party acts as the Processor, that party shall:
  - 7.7.1. process that Personal Data only on the documented written instructions of the Controller unless the Processor is required by Data Protection Legislation to otherwise process that Personal Data. The Participant acknowledges the Consortium shall rely upon the Data Protection Legislation as the basis of processing of Personal Data (if any). Where the Participant is relying on non-domestic law as the basis for processing Personal Data, the Participant shall promptly notify the Consortium of this before performing the processing required by the non-domestic law unless the non-domestic law prohibits the Participant from so notifying the Consortium;
  - 7.7.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 7.7.3. without prejudice to the confidentiality obligations in this Agreement ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 7.7.4. assist the Controller, at the Controller's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Commissioner;
  - 7.7.5. notify the Controller without undue delay, and in any event not later than 24 hours, on becoming aware of a Personal Data Breach;
  - 7.7.6. at the written direction of the Controller, delete or return Personal Data and copies of such to the Consortium on termination of the Agreement unless required by Applicable Law to store the Personal Data; and

- 7.7.7. maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.8. The Participant shall not transfer Personal Data outside the UK unless the prior written consent of the Consortium is obtained. Where such consent is granted, the Participant must only proceed with such transfer and process the Personal Data outside the UK under the following conditions:
  - 7.8.1. the transfer is to a territory which is subject to an adequacy regulation made in accordance with section 17A of the Data Protection Act 2018, being a permitted transfer under Article 45 of UK GDPR as said territory is deemed to provide adequate protection for the privacy rights of Data Subjects. The Participant shall identify such territory within Schedule 2;
  - 7.8.2. the Participant participates in a valid cross-border transfer mechanism in accordance with Article 46 of UK GDPR to ensure there is an adequate level of protection with respect to the privacy rights of Data Subjects. The Participant shall identify the transfer mechanism within Schedule 2 and must immediately inform the Consortium of any change to its status;
  - 7.8.3. the transfer otherwise complies with the Data Protection Legislation. The Participant shall provide full particulars to the Consortium within Schedule 2 and advise on any change to that status; and
  - 7.8.4. the Participant complies with reasonable instructions notified to it by the Consortium in advance of the transfer of Personal Data and thereafter as otherwise directed by the Consortium from time to time.
- 7.9. The Participant provides its prior, general authorisation for the Consortium to:
  - 7.9.1. appoint processors to process the Participant Personal Data, provided that the Consortium:
    - (a) shall ensure that the terms on which it appoints such processors comply with the Data Protection Legislation, and are consistent with the obligations imposed on the Consortium in this clause 7;
    - (b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Consortium; and
    - (c) shall inform the Participant of any intended changes concerning the addition or replacement of the processors, thereby giving the Participant the opportunity to object to such changes provided that if the Participant objects to the changes and cannot demonstrate, to the Consortium's reasonable satisfaction, that the objection is due to an actual or likely breach of the Data Protection Legislation, the Participant shall indemnify the Consortium for any

losses, damages, costs (including legal fees) and expenses suffered by the Consortium in accommodating the objection.

- 7.9.2. transfer Participant Personal Data outside of the UK as required for the Purpose, provided that the Consortium shall ensure that all such transfers are effected in accordance with the Data Protection Legislation. For these purposes, the Participant shall promptly comply with any reasonable request of the Consortium, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 7.10. The Participant agrees to indemnify, keep indemnified and defend at its own expense the Consortium against all fines, costs, claims, damages or expenses incurred by the Consortium or for which the Consortium may become liable due to any failure by the Participant or its employees, subcontractors or agents to comply with any of its obligations under this clause 7 or the Data Protection Legislation.
- 7.11. The Consortium's liability for losses arising from breaches of this clause 7 is as set out in clause 9.

## **8. CONFIDENTIALITY**

- 8.1. Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, Participants, clients or customers of the other party, except as permitted by clause 8.2.
- 8.2. Each party may disclose the other party's confidential information:
  - 8.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
  - 8.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## **9. LIMITATION OF LIABILITY**



- 9.1. References to liability in this clause 9 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2. Nothing in this Agreement shall limit the Participant's liability under Clause 5.3 (IPR indemnities).
- 9.3. Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
  - 9.3.1. death or personal injury caused by negligence; and
  - 9.3.2. fraud or fraudulent misrepresentation.
- 9.4. The provision of the Services by the Consortium to the Participant, including any deliverables arising therefrom, are intended to be for guidance purposes only and do not constitute, nor should be regarded, as a substitute for taking professional advice that is tailored to your circumstances. Subject to clause 9.3 (liabilities which cannot legally be limited), the Participant acknowledges that the Consortium will not be liable to the Participant for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or indirect or consequential loss.
- 9.5. Subject to clauses 9.3 (liabilities which cannot legally be limited) and 9.4 (types of loss wholly excluded) the Consortium's total liability to the Participant shall not exceed £1,000 (one thousand pounds sterling).
- 9.6. Unless the Participant notifies the Consortium that it intends to make a claim in respect of an event within the notice period, the Consortium shall have no liability for that event. The notice period for an event shall start on the day on which the Participant became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## **10. TERMINATION**

- 10.1. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
  - 10.1.1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 10.1.2. the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

- 10.1.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 103 of the Insolvency (NI) Order 1989;
- 10.1.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 10.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 10.1.7. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 10.1.8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 10.1.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 10.1.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.3 to clause 10.1.9 (inclusive);
- 10.1.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 10.1.12. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 10.2. Without affecting any other right or remedy available to it, the Consortium may terminate this Agreement by giving 30 days written notice to the Participant.

## **11. OBLIGATIONS ON TERMINATION AND SURVIVAL**

- 11.1. Obligations on termination or expiry
  - On termination or expiry of this Agreement the Participant shall immediately return all of the Consortium's Equipment. If the Participant fails to do so, then the Consortium may enter the Participant's Premises and take possession of the Consortium's Equipment. Until they have been returned or repossessed, the Participant shall be solely responsible for their safe keeping.
- 11.2. Survival
  - 11.2.1. On termination or expiry of this Agreement, the following clauses shall continue in force: clause 1 (Interpretation), clause 5 (Intellectual Property Rights), clause 8 (Confidentiality), clause 9 (Limitation of Liability), clause 11 (Obligations on Termination and Survival), clause 16 (Waiver), clause 18 (Severance), clause 20 (Conflict), clause 25 (Governing law) and clause 26 (Jurisdiction).
  - 11.2.2. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **12. NOT USED**

## **13. FORCE MAJEURE**

- 13.1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
  - 13.1.1. acts of God, flood, drought, earthquake or other natural disaster;
  - 13.1.2. epidemic or pandemic;
  - 13.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - 13.1.4. nuclear, chemical or biological contamination or sonic boom;
  - 13.1.5. any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 13.1.6. collapse of buildings, fire, explosion or accident;
  - 13.1.7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
  - 13.1.8. non-performance by Consortiums or subcontractors; and
  - 13.1.9. interruption or failure of utility service.

- 13.2. Provided it has complied with clause 13.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 13.4. The Affected Party shall:
  - 13.4.1. as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
  - 13.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 13.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 4 weeks' written notice to the Affected Party.

#### **14. ASSIGNMENT AND OTHER DEALINGS**

- 14.1. This Agreement is personal to the Participant and the Participant shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 14.2. The Consortium may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

#### **15. VARIATION**

- No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **16. WAIVER**

- 16.1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 16.2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any

other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 16.3. A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## **17. RIGHTS AND REMEDIES**

- The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. SEVERANCE**

- 18.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 18.2. If any provision or part-provision of this Agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **19. ENTIRE AGREEMENT**

- 19.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

## **20. CONFLICT**

- If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

## **21. NO PARTNERSHIP OR AGENCY**

- 21.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 21.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **22. THIRD PARTY RIGHTS**

- 22.1. This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 22.2. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

## **23. NOTICES**

- 23.1. Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:
  - 23.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 23.1.2. sent by email to the email address set out in the Contract Details Cover Sheet.
- 23.2. Any notice or communication shall be deemed to have been received:
  - 23.2.1. if delivered by hand, at the time the notice is left at the proper address;
  - 23.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - 23.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 23.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 23.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **24. NOT USED**

## **25. GOVERNING LAW**

- This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter

or formation shall be governed by and construed in accordance with the law of England and Wales.

## 26. JURISDICTION

- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

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# SCHEDULE:

## SCHEDULE 1: Service Details

### 1. SERVICES:

- 1.1 Document and analyse existing data collection processes and practice of the Participant
- 1.2 The analysis of data relating to the Participant's manufacturing process with such data to be derived either:
  - 1.2.1 directly from the Participant's Equipment;
  - 1.2.2 from the Consortium's Equipment which has been installed at the Participant's Premises; or
  - 1.2.3 a combination of paragraphs 1.2.1 and 1.2.2 above,
- 1.3 Recommend potential improvements to and/or automation of Participant's data collection process

### 2. DELIVERABLES:

- 2.1 Insights from data scientist's analysis of Participant's manufacturing data with recommendations for improvement to Participant's equipment and/or processes
- 2.2 Training/coaching on how Participant might improve their analysis
- 2.3 Process map of Participant's data collection process (as is and to be)

## SCHEDULE 2: Processing, Personal Data and Data Subjects

PART 1 – Processing by Consortium as Processor

<p>The subject matter and duration of the processing</p>	<p><i>The processing relates to the provision of the services set out in Schedule 1. The processing will continue for as long as the arrangement is in place and subject to each party's respective data retention requirements.</i></p>
<p>The nature and purpose of the processing</p>	<p><i>The nature of the processing is the receipt of the Personal Data set out below for the purposes of enabling the Consortium to provide the services set out in Schedule 1.</i></p>
<p>The type of Personal Data being processed</p>	<p><i>Name, contact details including email address and contact number, job title.</i></p>
<p>The categories of data subjects</p>	<p><i>Employees of the Participant.</i></p>
<p>Permitted Purposes</p>	<p><i>Processing of personal data in order to enable the Consortium to carry out the services set out in Schedule 1 by enabling the Consortium to communicate with the Participant in respect of the services.</i></p>
<p>Permitted Recipients</p>	<p>Name: Innovate UK, SQW Territory: The United Kingdom Or as otherwise agreed in writing between the parties from time to time.</p>
<p>Territory of Participant</p>	<p><i>United Kingdom</i></p>



The subject matter and duration of the processing	<i>The processing relates to the provision of services set out in Schedule 1 by the Consortium to the Processor.</i>
The nature and purpose of the processing	<i>The nature of the processing is the receipt of the Personal Data set out below for the purposes of enabling the Consortium to provide the services set out in Schedule 1.</i>
The type of Personal Data being processed	<i>Name, contact details including email address and contact number, job title.</i>
The categories of data subjects	<i>Employees of the Consortium.</i>
Permitted Purposes	<i>Processing of personal data in order to enable the Consortium to carry out the services set out in Schedule 1 by enabling the Consortium to communicate with the Participant in respect of the services.</i>
Permitted Recipients	<i>None.</i>

**By signing, dating and returning a copy of this Contract Details Cover Sheet, the Participant agrees to be bound by the terms of the Agreement. This Agreement has been entered into on 04 December 2023.**

**Signed by AN Other for and on behalf of A N Other Widgets.**

# Signature

**AN Other**

an\_other@another.com

[ sig|req|signer1 ]

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